

AMENDED IN SENATE MAY 17, 2004

AMENDED IN SENATE APRIL 28, 2004

**SENATE BILL**

**No. 1694**

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**Introduced by Senators Torlakson and Speier**  
*(Coauthors: Senators Machado and Ortiz)*

February 20, 2004

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An act to amend *Section 68152 of the Government Code*, and to amend Sections 23540, 23546, 23550, 23560, 23566, 23622, and 23646 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1694, as amended, Torlakson. Driving under the influence: sanction.

(1) Under existing law, it is unlawful to drive a motor vehicle while under the influence of alcohol, a drug, or both, or 0.08% or more, by weight, of alcohol in one's blood, or while addicted to the use of a drug. There is another crime of driving under the influence of alcohol, a drug, or both, or with 0.08% or more, by weight, alcohol in one's blood, and causing injury to another person. Under existing law, for violations of each of these offenses, commonly known as driving under the influence and driving under the influence causing injury, respectively, (DUI) a court may impose sanctions, as specified. Existing law imposes increased sanctions on persons who have previously been convicted of DUI offenses within 7 years of the commission of the current offense.

This bill would substitute a 10-year condition for the 7-year condition as a condition to imposing the increased sanctions on repeat offenders *and would make conforming changes*. Because this would

thereby increase the level of service on local law enforcement agencies, this bill would impose a state-mandated local program.

(2) Existing law authorizes a court to order a person convicted of a DUI offense to attend an alcohol and drug problem assessment program.

This bill would require a court to order a person who has previously been convicted of either a DUI offense that occurred over 10 years ago or disorderly conduct based on being found in a public place under the influence of alcohol or drugs, and who is currently convicted of a DUI offense to attend and complete that program. *The bill would allow the court to rely on certain information and records regarding the existence of a previous conviction.* The bill would authorize a court, if the program assessment recommends additional treatment, to order the person to enroll and participate in an enhanced treatment program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares the  
2 following:

3 (a) Driving under the influence of alcohol or drugs, or both,  
4 (DUI) continues to be a significant threat to the public health and  
5 safety.

6 (b) Despite significant progress and declining rates of DUI in  
7 the last two decades, fatalities associated with this conduct have  
8 increased for the past several years.

9 (c) Two hundred thirty-six more people died from DUI conduct  
10 in 2001 than did in 1998.

11 (d) Nearly 180,000 people were arrested for DUI offenses in  
12 2001, including 25 percent of whom were repeat offenders.

13 SEC. 2. *Section 68152 of the Government Code is amended*  
14 *to read:*



68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

- (a) Adoption: retain permanently.
  - (b) Change of name: retain permanently.
  - (c) Other civil actions and proceedings, as follows:
    - (1) Except as otherwise specified: 10 years.
    - (2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.
    - (3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.
    - (4) Eminent domain: retain permanently.
    - (5) Family law, except as otherwise specified: 30 years.
    - (6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.
    - (7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.
    - (8) Paternity: retain permanently.
    - (9) Petition, except as otherwise specified: 10 years.
    - (10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.
    - (11) Small claims: 10 years.
    - (12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.
  - (d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:
    - (1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.
    - (2) Voluntarily dismissed by a party without entry of judgment: one year.
- Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.
- (e) Criminal.

- 1 (1) Capital felony (murder with special circumstances where  
2 the prosecution seeks the death penalty): retain permanently. If the  
3 charge is disposed of by acquittal or a sentence less than death, the  
4 case shall be reclassified.
- 5 (2) Felony, except as otherwise specified: 75 years.
- 6 (3) Felony, except capital felony, with court records from the  
7 initial complaint through the preliminary hearing or plea and for  
8 which the case file does not include final sentencing or other final  
9 disposition of the case because the case was bound over to the  
10 superior court: five years.
- 11 (4) Misdemeanor, except as otherwise specified: five years.
- 12 (5) Misdemeanor alleging a violation of the Vehicle Code,  
13 except as otherwise specified: three years.
- 14 (6) Misdemeanor alleging a violation of Section 23103, 23152,  
15 or 23153 of the Vehicle Code: ~~seven~~ 10 years.
- 16 (7) Misdemeanor alleging a violation of Section 14601,  
17 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.
- 18 (8) Misdemeanor alleging a marijuana violation under  
19 subdivision (b), (c), (d), or (e) of Section 11357 of the Health and  
20 Safety Code, or subdivision (b) of Section 11360 of the Health and  
21 Safety Code in accordance with the procedure set forth in Section  
22 11361.5 of the Health and Safety Code: records shall be destroyed  
23 two years from the date of conviction or from the date of arrest if  
24 no conviction.
- 25 (9) Misdemeanor, infraction, or civil action alleging a violation  
26 of the regulation and licensing of dogs under Sections 30951 to  
27 30956, inclusive, of the Food and Agricultural Code or violation  
28 of any other local ordinance: three years.
- 29 (10) Infraction, except as otherwise specified: three years.
- 30 (11) Parking infractions, including alleged violations under the  
31 stopping, standing, and parking provisions set forth in Chapter 9  
32 (commencing with Section 22500) of Division 11 of the Vehicle  
33 Code: two years.
- 34 (f) Habeas corpus: same period as period for retention of the  
35 records in the underlying case category.
- 36 (g) Juvenile.
- 37 (1) Dependent (Section 300 of the Welfare and Institutions  
38 Code): upon reaching age 28 or on written request shall be released  
39 to the juvenile five years after jurisdiction over the person has  
40 terminated under subdivision (a) of Section 826 of the Welfare and



1 Institutions Code. Sealed records shall be destroyed upon court  
2 order five years after the records have been sealed pursuant to  
3 subdivision (c) of Section 389 of the Welfare and Institutions  
4 Code.

5 (2) Ward (Section 601 of the Welfare and Institutions Code):  
6 upon reaching age 21 or on written request shall be released to the  
7 juvenile five years after jurisdiction over the person has terminated  
8 under subdivision (a) of Section 826 of the Welfare and  
9 Institutions Code. Sealed records shall be destroyed upon court  
10 order five years after the records have been sealed under  
11 subdivision (d) of Section 781 of the Welfare and Institutions  
12 Code.

13 (3) Ward (Section 602 of the Welfare and Institutions Code):  
14 upon reaching age 38 under subdivision (a) of Section 826 of the  
15 Welfare and Institutions Code. Sealed records shall be destroyed  
16 upon court order when the subject of the record reaches the age of  
17 38 under subdivision (d) of Section 781 of the Welfare and  
18 Institutions Code.

19 (4) Traffic and some nontraffic misdemeanors and infractions  
20 (Section 601 of the Welfare and Institutions Code): upon reaching  
21 age 21 or five years after jurisdiction over the person has  
22 terminated under subdivision (c) of Section 826 of the Welfare and  
23 Institutions Code. May be microfilmed or photocopied.

24 (5) Marijuana misdemeanor under subdivision (e) of Section  
25 11357 of the Health and Safety Code in accordance with  
26 procedures specified in subdivision (a) of Section 11361.5 of the  
27 Health and Safety Code: upon reaching age 18 the records shall be  
28 destroyed.

29 (h) Probate.

30 (1) Conservatorship: 10 years after decree of termination.

31 (2) Guardianship: 10 years after the age of 18.

32 (3) Probate, including probated wills, except as otherwise  
33 specified: retain permanently.

34 (i) Court records of the appellate division of the superior court:  
35 five years.

36 (j) Other records.

37 (1) Applications in forma pauperis: any time after the  
38 disposition of the underlying case.

39 (2) Arrest warrant: same period as period for retention of the  
40 records in the underlying case category.

- 1 (3) Bench warrant: same period as period for retention of the  
2 records in the underlying case category.
- 3 (4) Bond: three years after exoneration and release.
- 4 (5) Coroner's inquest report: same period as period for  
5 retention of the records in the underlying case category; if no case,  
6 then permanent.
- 7 (6) Court orders not associated with an underlying case, such  
8 as orders for destruction of court records for telephone taps, or to  
9 destroy drugs, and other miscellaneous court orders: three years.
- 10 (7) Court reporter notes: 10 years after the notes have been  
11 taken in criminal and juvenile proceedings and five years after the  
12 notes have been taken in all other proceedings, except notes  
13 reporting proceedings in capital felony cases (murder with special  
14 circumstances where the prosecution seeks the death penalty and  
15 the sentence is death), including notes reporting the preliminary  
16 hearing, which shall be retained permanently, unless the Supreme  
17 Court on request of the court clerk authorizes the destruction.
- 18 (8) Electronic recordings made as the official record of the oral  
19 proceedings under the California Rules of Court: any time after  
20 final disposition of the case in infraction and misdemeanor  
21 proceedings, 10 years in all other criminal proceedings, and five  
22 years in all other proceedings.
- 23 (9) Electronic recordings not made as the official record of the  
24 oral proceedings under the California Rules of Court: any time  
25 either before or after final disposition of the case.
- 26 (10) Index, except as otherwise specified: retain permanently.
- 27 (11) Index for cases alleging traffic violations: same period as  
28 period for retention of the records in the underlying case category.
- 29 (12) Judgments within the jurisdiction of the superior court  
30 other than in a limited civil case, misdemeanor case, or infraction  
31 case: retain permanently.
- 32 (13) Judgments in misdemeanor cases, infraction cases, and  
33 limited civil cases: same period as period for retention of the  
34 records in the underlying case category.
- 35 (14) Minutes: same period as period for retention of the records  
36 in the underlying case category.
- 37 (15) Naturalization index: retain permanently.
- 38 (16) Ninety-day evaluation (under Section 1203.03 of the  
39 Penal Code): same period as period for retention of the records in

1 the underlying case category, or period for completion or  
2 termination of probation, whichever is longer.

3 (17) Register of actions or docket: same period as period for  
4 retention of the records in the underlying case category, but in no  
5 event less than 10 years for civil and small claims cases.

6 (18) Search warrant: 10 years, except search warrants issued in  
7 connection with a capital felony case defined in paragraph (7),  
8 which shall be retained permanently.

9 (k) Retention of any of the court records under this section shall  
10 be extended as follows:

11 (1) By order of the court on its own motion, or on application  
12 of a party or any interested member of the public for good cause  
13 shown and on such terms as are just. No fee shall be charged for  
14 making the application.

15 (2) Upon application and order for renewal of the judgment to  
16 the extended time for enforcing the judgment.

17 *SEC. 3.* Section 23540 of the Vehicle Code is amended to  
18 read:

19 23540. If a person is convicted of a violation of Section 23152  
20 and the offense occurred within 10 years of a separate violation of  
21 Section 23103, as specified in Section 23103.5, 23152, or 23153,  
22 that resulted in a conviction, that person shall be punished by  
23 imprisonment in the county jail for not less than 90 days nor more  
24 than one year and by a fine of not less than three hundred ninety  
25 dollars (\$390) nor more than one thousand dollars (\$1,000). The  
26 person's privilege to operate a motor vehicle shall be suspended by  
27 the Department of Motor Vehicles pursuant to paragraph (3) of  
28 subdivision (a) of Section 13352. The court shall require the  
29 person to surrender the driver's license to the court in accordance  
30 with Section 13550.

31 ~~SEC. 3.—~~

32 *SEC. 4.* Section 23546 of the Vehicle Code is amended to  
33 read:

34 23546. (a) If a person is convicted of a violation of Section  
35 23152 and the offense occurred within 10 years of two separate  
36 violations of Section 23103, as specified in Section 23103.5,  
37 23152, or 23153, or any combination thereof, that resulted in  
38 convictions, that person shall be punished by imprisonment in the  
39 county jail for not less than 120 days nor more than one year and  
40 by a fine of not less than three hundred ninety dollars (\$390) nor



1 more than one thousand dollars (\$1,000). The person's privilege  
2 to operate a motor vehicle shall be revoked by the Department of  
3 Motor Vehicles as required in paragraph (5) of subdivision (a) of  
4 Section 13352. The court shall require the person to surrender his  
5 or her driver's license to the court in accordance with Section  
6 13550.

7 (b) A person convicted of a violation of Section 23152  
8 punishable under this section shall be designated as a habitual  
9 traffic offender for a period of three years, subsequent to the  
10 conviction. The person shall be advised of this designation  
11 pursuant to subdivision (b) of Section 13350.

12 ~~SEC. 4.—~~

13 SEC. 5. Section 23550 of the Vehicle Code is amended to  
14 read:

15 23550. (a) If a person is convicted of a violation of Section  
16 23152 and the offense occurred within 10 years of three or more  
17 separate violations of Section 23103, as specified in Section  
18 23103.5, or Section 23152 or 23153, or any combination thereof,  
19 that resulted in convictions, that person shall be punished by  
20 imprisonment in the state prison, or in a county jail for not less than  
21 180 days nor more than one year, and by a fine of not less than three  
22 hundred ninety dollars (\$390) nor more than one thousand dollars  
23 (\$1,000). The person's privilege to operate a motor vehicle shall  
24 be revoked by the Department of Motor Vehicles pursuant to  
25 paragraph (7) of subdivision (a) of Section 13352. The court shall  
26 require the person to surrender the driver's license to the court in  
27 accordance with Section 13550.

28 (b) A person convicted of a violation of Section 23152  
29 punishable under this section shall be designated as a habitual  
30 traffic offender for a period of three years, subsequent to the  
31 conviction. The person shall be advised of this designation  
32 pursuant to subdivision (b) of Section 13350.

33 ~~SEC. 5.—~~

34 SEC. 6. Section 23560 of the Vehicle Code is amended to  
35 read:

36 23560. If a person is convicted of a violation of Section 23153  
37 and the offense occurred within 10 years of a separate violation of  
38 Section 23103, as specified in Section 23103.5, 23152, or 23153  
39 that resulted in a conviction, that person shall be punished by  
40 imprisonment in the state prison, or in a county jail for not less than





120 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

~~SEC. 6.—~~

SEC. 7. Section 23566 of the Vehicle Code is amended to read:

23566. (a) If a person is convicted of a violation of Section 23153 and the offense occurred within 10 years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars (\$1,015) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) If a person is convicted of a violation of Section 23153, and the act or neglect proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to any person other than the driver, and the offense occurred within 10 years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars (\$1,015) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(c) If a person is convicted under subdivision (b), and the offense for which the person is convicted occurred within 10 years

1 of four or more separate violations of Section 23103, as specified  
2 in Section 23103.5, or Section 23152 or 23153, or any  
3 combination of these violations, that resulted in convictions, that  
4 person shall, in addition and consecutive to the sentences imposed  
5 under subdivision (b), be punished by an additional term of  
6 imprisonment in the state prison for three years.

7 The enhancement allegation provided in this subdivision shall  
8 be pleaded and proved as provided by law.

9 (d) A person convicted of Section 23153 punishable under this  
10 section shall be designated as a habitual traffic offender for a  
11 period of three years, subsequent to the conviction. The person  
12 shall be advised of this designation pursuant to subdivision (b) of  
13 Section 13350.

14 (e) A person confined in state prison under this section shall be  
15 ordered by the court to participate in an alcohol or drug program,  
16 or both, that is available at the prison during the person's  
17 confinement. Completion of an alcohol or drug program under this  
18 section does not meet the program completion requirement of  
19 paragraph (6) of subdivision (a) of Section 13352, unless the drug  
20 or alcohol program is licensed under Section 11836 of the Health  
21 and Safety Code, or is a program specified in Section 8001 of the  
22 Penal Code.

23 ~~SEC. 7.—~~

24 SEC. 8. Section 23622 of the Vehicle Code is amended to  
25 read:

26 23622. (a) In any case charging a violation of Section 23152  
27 or 23153 and the offense occurred within 10 years of one or more  
28 separate violations of Section 23103, as specified in Section  
29 23103.5, that occurred on or after January 1, 1982, 23152, or  
30 23153, or any combination thereof, that resulted in convictions,  
31 the court shall not strike any separate conviction of those offenses  
32 for purposes of sentencing in order to avoid imposing, as part of  
33 the sentence or term of probation, the minimum time of  
34 imprisonment and the minimum fine, as provided in this chapter,  
35 or for purposes of avoiding revocation, suspension, or restriction  
36 of the privilege to operate a motor vehicle, as provided in this code.

37 (b) In any case charging a violation of Section 23152 or 23153,  
38 the court shall obtain a copy of the driving record of the person  
39 charged from the Department of Motor Vehicles and may obtain  
40 any records from the Department of Justice or any other source to

determine if one or more separate violations of Section 23103, as specified in Section 23103.5, that occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, that resulted in convictions, have occurred within 10 years of the charged offense. The court may obtain, and accept as rebuttable evidence, a printout from the Department of Motor Vehicles of the driving record of the person charged, maintained by electronic and storage media pursuant to Section 1801 for the purpose of proving those separate violations.

(c) If any separate convictions of violations of Section 23152 or 23153 are reported to have occurred within 10 years of the charged offense, the court shall notify each court where any of the separate convictions occurred for the purpose of enforcing terms and conditions of probation pursuant to Section 23602.

~~SEC. 8.—~~

SEC. 9. Section 23646 of the Vehicle Code is amended to read:

23646. (a) Each county alcohol program administrator or the administrator's designee shall develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this article for each person described in subdivision (b). The alcohol and drug problem assessment program may include a referral and client tracking component.

(b) (1) The court shall order a person to participate in an alcohol and drug problem assessment program pursuant to this section and Sections 23647 to 23649, inclusive, and the related regulations of the State Department of Alcohol and Drug Programs, if the person was convicted of a violation of Section 23152 or 23153 that occurred within 10 years of a separate violation of Section 23152 or 23153 that resulted in a conviction, the person was required to attend a licensed program pursuant to a court order, and the person has once failed to comply with the rules and policies of the licensed program, other than a rule relating to the payment of fees, in accordance with the rules and regulations of the state department.

(2) A court may order a person convicted of a violation of Section 23152 or 23153 to attend an alcohol and drug problem assessment program pursuant to this article.

(3) (A) The court shall order a person convicted of a violation of Section 23152 or 23153 who has previously been convicted of

1 a violation of Section 23152 or 23153 that occurred more than 10  
2 years ago, or has been previously convicted of a violation of  
3 subdivision (f) of Section 647 of the Penal Code, to attend and  
4 complete an alcohol and drug problem assessment program under  
5 this article. ~~If~~ *In order to determine whether a previous conviction*  
6 *exists, the court may rely on state summary criminal history*  
7 *information, local summary history information, or records made*  
8 *available to the judge through the district attorney.*

9 (B) If the program assessment recommends additional  
10 treatment, the court may order a person under Section 23538 to  
11 enroll and participate in either of the programs described under  
12 paragraph (4) of subdivision (b) of Section 23542.

13 (c) The State Department of Alcohol and Drug Programs shall  
14 establish minimum specifications for alcohol and other drug  
15 problem assessments and reports not later than September 30,  
16 1999.

17 ~~SEC. 9.—~~

18 *SEC. 10.* No reimbursement is required by this act pursuant  
19 to Section 6 of Article XIII B of the California Constitution  
20 because the only costs that may be incurred by a local agency or  
21 school district will be incurred because this act creates a new crime  
22 or infraction, eliminates a crime or infraction, or changes the  
23 penalty for a crime or infraction, within the meaning of Section  
24 17556 of the Government Code, or changes the definition of a  
25 crime within the meaning of Section 6 of Article XIII B of the  
26 California Constitution.